

19652. Adulteration and misbranding of B. & M. U. S. v. 145 Small and 164 Large Bottles of B. & M. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 26982. I. S. Nos. 37913, 37914. S. No. 5196.)

This action involved the interstate shipment of a quantity of B. & M., in which the carton and accompanying circular bore statements identical with those borne by the carton and circular shipped with the product covered by N. J. No. 19651. The bottle labels were also the same as those quoted in the said notice of judgment as applicable to the small bottles of the product. Examination showed that the article contained no ingredients capable of producing the curative and therapeutic effects claimed in the labeling. Tests of its antiseptic properties showed that it would not destroy germs when used as directed.

On September 21, 1931, the United States attorney for the Middle District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 145 small bottles and 164 large bottles of B. & M., remaining in the original unbroken packages at Harrisburg, Pa., alleging that the article had been shipped in interstate commerce on or about September 10, 1931, by the F. E. Rollins Co., from Boston, Mass., to Harrisburg, Pa., and charging adulteration and misbranding in violation of the food and drugs act as amended.

Chemical analyses of samples of the article by this department showed that it consisted essentially of approximately 42 per cent of turpentine oil, approximately 5 per cent of ammonia, small proportions of ammonium salicylate, hexamethylenamine, thiosinamine, and a phenolic substance such as cresol, albuminous and phosphorus-containing material such as egg, and water. Bacteriological examination showed that it failed to kill a resistant strain of *Staphylococcus aureus* at body temperature within 30 minutes.

It was alleged in the libel that the article was adulterated in that it was sold under the following standard of strength: (Booklet cover) "For External Application, Inhalations Antiseptic;" (booklet, p. 1) "An Antiseptic * * * Application * * * For Antiseptic Applications," whereas the strength of said article fell below such professed standard in that the article did not possess antiseptic properties when used as directed in the labeling.

Misbranding was alleged for the reason that certain statements appearing in the printed booklet accompanying the article, and the designs appearing therein, were false and misleading. These false and misleading statements and designs were contained in an exhibit marked "Exhibit A" and made a part of and incorporated in the libel, and were identical with those quoted in notice of judgment No. 19651 as Exhibit A. Misbranding was alleged for the further reason that certain statements, designs, and devices appearing in the labeling of the product, regarding the curative or therapeutic effects of the article, were false and fraudulent, since it contained no ingredient or combination of ingredients capable of producing the effects claimed. These statements, designs, and devices were contained in an exhibit, marked "Exhibit B," and were attached to the libel and made a part of and incorporated therein, and were identical with false and fraudulent statements appearing on the carton, booklet, and small bottle labels in the product covered by notice of judgment No. 19651, and set out therein in Exhibit B.

On October 13, 1931, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*